IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 6TH DECEMBER 2007 / 15TH AGRAHAYANA 1929

Crl.MC.No. 3647 of 2007

(C.C. NO. 167/99 OF ADDITIONAL CHIEF JUDICIAL MAGISTRATE COURT, THIRUVANANTHAPURAM).

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PETITIONER/ 5TH ACCUSED:

SAJI GEORGE, S/O.GEORGE VARGHESE,
MALAYIL HOUSE, NALANCHIRA, THIRUVANANTHAPURAM,
A MENTALLY HANDICAPPED PERSON REPRESENTED BY
HIS WIFE AND GUARDIAN MRS.SHEEBA VARGHESE,
AGED 34 YEARS, MALAYIL HOUSE, NALANCHIRA P.O.,
THIRUVANANTHAPURAM.

BY ADV. SRI.S.P.CHALY.

RESPONDENTS/ STATE AND DEFACTO COMPLAINANT:
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1. **STATE OF KERALA, REPRESENTED BY**
   THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
   ERNAKULAM.

2. **BALAKRISHNA PILLAI, S/O.KUTTAN PILLAI,**
   T.C.49/495, PRANAVAM, MANAKKATTU VILLAGE,
   THIRUVANANTHAPURAM.

BY PUBLIC PROSECUTOR SRI. M.S. BREEZ.

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 06/12/2007,ALONG WITH CRL.M.C. NOS. 3648/2007 & 3649/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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Crl.M.C.Nos. 3647, 3648 &
3649 of 2007

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Dated this the 6th day of December, 2007

O R D E R

The common petitioner is the 5th accused in the three prosecutions, all before the same court, i.e. Addl. Chief judicial Magistrate, Trivandrum, pending as C.C. Nos. 65, 167 and 215 of 1999. The petitioner faces allegations, along with the co-accused, for offences punishable, inter alia, under Sections 420, 409 and 120B I.P.C. I am surprised to know that even charges have not been framed in these cases till now.

2. The crux or the gravamen of the allegations in all these cases is that the petitioner, along with the co-accused, had conspired to commit the offence of cheating, breach of trust and misappropriation. Deposits were collected from members of the public fraudulently and the funds were allegedly misappropriated. Cognizance was taken in all the three cases on the basis of the final reports submitted by the police after due investigation. It is seen that though the cases have been initiated

in 1999, the charges have not been framed against the accused so far. They have entered appearance before the learned Addl. C.J.M. and were enlarged on bail. From 1999 to 2007 the cases are pending before the Addl.C.J.M. The petitioner has now come before this Court with these petitions under Section 482 Cr.P.C. praying that invoking the extra ordinary inherent jurisdiction, the prosecutions so far as it relate to the petitioner may be quashed.

3. What is the reason? The short contention raised is that by order dt. 12.3.1999 in O.P.(MHA) 274 of 1998, the petitioner has been declared to be a mentally ill person and that a Guardian deserves to be appointed for him. The learned counsel for the petitioner contends that in view of that finding and the decision of the competent court, the petitioner cannot be held to be having the mental competence to enter into any conspiracy, which is the foundation of the indictment in all the three cases.

4. Heard the learned counsel for the petitioner. I am afraid I am

unable to accept this contention. First of all I note that there is no satisfactory explanation offered why the petitioner has not come before this Court earlier and has come only now after 8 years of the pendency of the prosecution before the learned Magistrate. I am called upon to invoke the extra ordinary inherent jurisdiction under Section 482 Cr.P.C. and such jurisdiction can and ought to be invoked only in aid of justice. The petitioner, who has not chosen to raise this plea all along has now chosen to raise that plea. There is no sufficient reason to entertain the said plea now.

5. I take note of the further circumstance that the order is passed by the District Court only on 12.3.1999 and the said application was itself filed only in 1998. The allegation in these three cases relate to anterior periods also. The order dt. 12.3.1999 in O.P. (MHA) 274 of 1998 cannot certainly be held out as a defence for the alleged conduct prior to the date of the petition and the date of the order. The learned counsel submits that in that O.P. the court had considered the

evidence available about his mental state even on earlier dates. Some prescriptions for anterior period were also placed before the learned District Judge, who eventually passed the order. That cannot be a valid reason to come to the conclusion that the petitioner did not have the requisite contumacious mind prior to the date of the petition or the date of the order.

6. I must also note that the legal insanity against an indictment cannot readily be equated to the state of mind that is required to secure an order like Annex.A, i.e. the order dt. 12.3.1999 in O.P. (MHA) 274 of 1998. In the crime in which the petitioner faces indictment, the petitioner must prove legal insanity as is recognised under Section 84 I.P.C. to claim exoneration from the liability. The mere fact that the court had found that a Guardian must be appointed on account of the mental illness to the petitioner is not a sufficient and complete defence to the indictment, which the petitioner has to face. The petitioner is not likely to suffer any prejudice or injustice. He will have to appear

before the learned Magistrate. If there is any mental ailment and consequent inability to stand trial, that is to be enquired into under the provisions of the Cr.P.C. Thereafter the petitioner can raise his plea under Section 84 I.P.C. In that view of the matter also, I am not satisfied that powers under section 482 Cr.P.C. deserves to be invoked in these case.

7. These Crl.M.Cs. are accordingly dismissed.

(R. BASANT)
Judge

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